IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL NO. 1008 OF 2004

UTI Bank Ltd. ... Appellant

V/s

Smt. Saroj C. Jain ... Respondent

Shri Roshib Shah with Shri Prakash Shinde i/by Dhruva & Co. for the appellant.

Shri H.C. Mehta i/by Mehta & Co. for the Respondent.

CORAM: P.V. KAKADE, J.

DATED: 14TH OCT., 2004.

P.C.:

1. Heard learned counsel for both parties.

2. Rule. Rule made returnable forthwith.

3. The appeal is aimed against the judgment and order passed by the lower Court decreeing the suit of the plaintiff against the appellant bank. Perusal of the record shows that this is the order obviously passed under the provisions of Order 8 Rule 5(2) of the C.P.C. accepting the claim of the plaintiff made out in the plaint as well as the affidavit of evidence and it was

held that since the defendant failed to file written statement, those contents of the affidavit of evidence remained unchallenged.

4. It is urged on behalf of the appellant at this stage that the client should not be made to suffer for the omission of the advocate and he deserves the fair trial. In view of the facts and circumstances and on perusal of the record, I accept the contention and pass the following order :-

O R D E R

The appeal is allowed and order passing decree dated 17.8.2002 is hereby set aside.

The matter is remanded to the lower Court for adjudication afresh.

The defendant shall be allowed to cross-examine the witness of the plaintiff on the basis of affidavit of evidence filed by him. The parties shall also be allowed to lead any other evidence, if they so desire.

The lower Court is directed to adjudicate the dispute on

merits within six months from the date of this order.

With these directions, the appeal stands disposed of with no order as to costs.

Consequently, the civil application also stands disposed of.

It is clarified that the appellant shall deposit the decretal amount alongwith costs in the lower Court before the trial begins and this shall be the condition precedent.

C. c. expedited.

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